To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners invoke the jurisdiction of this Court and apply for Writs of Certiorari in the "*Estate of Janet M. Peck, Deceased*" to the following Courts of the State of California:

Supreme Court in S.F. No 19008; District Court of Appeal, First Appellate District, Division Two, in 1 Civ. No 18130; and the Superior Court of San Francisco County, Department 9, Probate, in No 138,968.

The record consists of a binder containing the Clerk's and Reporter's transcripts of proceedings in the Superior Court and the briefs and all other proceedings in the appellate courts. Since the record is not printed, the items in the binder are numbered consecutively and identified in the Table of Contents. These item numbers, with appropriate page and line references, will be used herein.

Unless otherwise stated, all italics and other emphasis in this Petition is ours.

LOWER COURT OPINIONS

The opinion of the District Court of Appeal, reported at 168 Adv. Cal. App. 28, 335 P. 2d 185, is set forth in the Appendix. No opinions were filed by the Superior Court or the State Supreme Court.

JURISDICTIONAL STATEMENT.

Jurisdiction is invoked pursuant to 28 USCA 1257, sub. 3. The State courts have deprived Petitioners of their right to an appellate review in accordance with minimum constitutional standards. Due process and equal protection have been denied. The legal issues raised are of the highest importance to the Federal and State Judiciary, the Bar, and general public. They concern Federal questions of substance, some of which have not been determined by this Court; others are probably not in accord with applicable decisions. The time for certiorari was extended by filing petitions for rehearing, the time table in that respect being the following:

District Court of Appeal: Opinion filed Feb. 16, 1959; Rehearing Petition, March 2, 1959; denied March 18, 1959;

Supreme Court: Petition filed March 27, 1959, denied April 15, 1959.

Under 28 USCA 2101 (c) a certiorari petition may be filed on or before July 14, 1959.

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[1]Rules on Appeal fixing time are the following: Rule 27(b) allows 15 days after decision, for rehearing petition in District Court of Appeal. Time expired March 3d. Petition filed March 2d. Under Rule 24(a), decision of District Court of Appeal became final, as to that court, 30 days after opinion, viz: On March 18, 1959. Rule 28(b) allows 10 days thereafter for filing petition in Supreme Court. That time expired March 28, 1959. Petition filed March 27th. Rule 28(a) allows Supreme Court to order transfer and further hearing within 30 days after decision of District Court of Appeal becomes final as to that court. That time expired April 18th. Supreme Court order denying hearing was entered April 15, 1959. Certiorari time began to run from that date. The remittitur issued subsequently. Power in the Supreme Court to grant a hearing after decision by a District Court of Appeal is conferred by Art. VI, Sec. 4c, of the State Constitution. It is settled that these proceedings tolled the time under 28 USCA,

QUESTIONS PRESENTED FOR REVIEW.

First: The deliberately false interpretation of a document as a denial of due process and equal protection.

Is it a violation of the Fourteenth Amendment for a court to falsify the record by a deliberately untruthful interpretation of a document?

Second: A fraudulent opinion as a discrimination technique.

Is it a denial of due process and equal protection for a court to enter a judgment based on a fraudulent opinion containing (a) direct falsehoods, (b) half-truths, and (c) deliberate suppression of material facts in disregard of the record?

Should the rules enunciated in *Chessman v. Teets*, 350 U.S. 3, and *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, be applied to this set of facts?

Third: Use of an unlawful "presumption" to advance the cause of one litigant to the detriment of another.

Does the Fourteenth Amendment prohibit courts from having any fixed policy favoring one litigant or class in hostility or antagonism to the rights of other persons or groups?

Where, by statute, the scope of a presumption against intestacy or in favor of alleged "charity" is limited to cases where the terms of a will have two or more possible interpretations—is it a denial of due process and equal

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Sec. 2101, sub. (c). See *Department of Banking v. Pink*, 317 U.S. 264; *Bowman v. Loperena*, 311 U.S. 262; *Wayne United Gas Co. v. Owens' Illinois Glass Co.*, 300 U.S. 131; *United States v. Seminole Nation*, 299 U.S. 417.

protection to apply such a presumption in a case where (a) the words used have no dual meaning, and (b) the statutory basis for the presumption does not exist?

Was it a violation of the Amendment for the State courts to refuse to apply the minimum constitutional standards set forth in *Estate of Kline*, 138 Cal. App. 514, 519-520?[2]

Fourth: Exercise of legislative power by a judicial body.

Is it a denial of due process and equal protection within the meaning of the Fourteenth Amendment for a court to exercise legislative power?

Does it constitute the exercise of such a power for a court to enter a judgment which, to be valid, would require repeal or amendment of existing statutes or constitutional provisions?

Is the retroactive exercise of such legislative power a violation of the due process and equal protection clauses of the Amendment?

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[2] *Estate of Kline*, supra: "Respondent makes the suggestion that, since legacies and devises for charitable purposes 'are the favorites of the courts, . . . the language should be liberally construed so as to create a valid trust if possible.' . . .

"On reflection, it should be apparent that the courts can have no fixed policy which will admit of the operation of a principle by which one party to litigation will be favored to the detriment of the other party therein. Manifestly, even handed justice cannot be administered on the basis of partisanship, expressed or indicated, either in favor of, or in antagonism against, either of the parties to the litigation. Nor may the subject matter in controversy in any manner affect the scales of justice. The business of the courts is to administer justice as nearly as may be in accordance with fixed rules of law and procedure . . . Any intentional departure from such a course, no matter how worthy the objective, must result in reproach to the surest foundational support of our government."

Fifth: Minimum standards of due process and equal protection required by the Fifth and Fourteenth Amendments in an appellate court.

What are the minimum constitutional standards required in appellate court proceedings, as to (a) limiting jurisdiction to matters of record, (b) protecting the right of litigants to a decision in conformity therewith, (c) observing established rules of law, (d) fair and unbiased appellate review, (e) a truthful opinion, and (f) entry of a judgment on appeal in accordance with an opinion so prepared?

Do the minimum standards of due process and equal protection which have been enforced in proceedings of administrative and legislative Boards, Commissions, and Committees, apply with equal force and effect to the proceedings of appellate courts?

Sixth: Equal application of Bill of Rights Sections to Property Rights and Personal Rights.

Petitioners have been deprived of their property, viz: Their rights of inheritance in a decedent's estate—by state court action amounting to a denial of due process and equal protection. Do these Property Rights have equal rank and status with the Personal Rights of other litigants who have successfully invoked the Fourteenth Amendment? Are these Property Rights entitled to the same protection? Should the rules in *Ullmann v. United States*, 350 U.S. 422, 428; and *Board of Education v. Barnette*, 319 U.S. 624, 648, be applied to this set of facts?

Seventh: Relief on certiorari, as a matter of right, where adequate review is denied in the lower appellate court.

Where a lower appellate court has failed to protect the right of a litigant to due process and equal protection in the proceedings conducted before it, and has not given the kind of review required to satisfy minimum constitutional standards, is a petitioner aggrieved by such conduct entitled to appropriate relief on certiorari, as a matter of right?

Does the judicial oath provision in Article VI of the United States Constitution require the Justices of this Court to issue the writ and grant relief where the proceedings in the lower appellate court do not comply with these constitutional standards?

Was it the intent of Congress in enacting 28 USCA 1257, sub. 3, to limit the discretionary power of selection conferred on this Court to those cases where there has in fact been a fair and adequate appellate review in some lower court?

The questions presented for review all arise in a civil action challenging the validity of a perpetual trust for a mixture of charitable and non-charitable objects. Under the law of the State, such trusts are void in their entirety and the assets involved must be distributed on the ground of an intestacy. Petitioners claim the residue on that theory.

The State court (a) adopted a false interpretation of the will in disregard of statutory rules of construction, (b) it misquoted and thereby falsified the record, (c) it delivered a fraudulent opinion based on such falsification,

and (d) it exercised the legislative power to "validate" this invalid trust by exempting it from the operation of constitutional and statutory provisions in force at date of death. Aside from the public importance of the issues, the right to relief on certiorari arises from the fact that there has never been an adequate review on appeal in any court.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

United States Constitution:

Amendment XIV, Section 1. "No State shall . . . deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Article III, Section 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 2. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, : . ."

Article VI. ". . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . ."

28 USCA Section 1257:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

"(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, . . ."

California Constitution, Article XX, Section 9:

"No perpetuities shall be allowed except for eleemosynary purposes."

California Civil Code, Section 22.2:

"The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, *is the rule of decision in all the courts of this State.*"

California Probate Code:

Section 50. "Every will, other than a nuncupative will, must be *in writing* . . ."

Section 100. "The interpretation of wills, wherever made, is governed, when relating to property within this state, by the law of this state, *and the rules prescribed by this code are to be observed*, unless an intention to the contrary clearly appears."

Section 102. "The words of a will are to receive an interpretation which will *give to every expression some effect*, rather than one which will render any of the expressions inoperative; and *of two modes of interpreting* a will, that is to be preferred which will prevent a total intestacy."

Section 106. "The words of a will are to be taken in their *ordinary and grammatical sense*, unless a clear intention to use them in another sense can be collected, and that other can be ascertained. *Technical words* . . . in a will are to be taken in their *technical sense*, unless the context clearly indicates a contrary intention . . ."

The statutory adoption of the common law has been held to include equitable principles.[2a] One of the principles so adopted is the rule in *Morice v. The Bishop of Durham*, 9 Vesey Jr., 399, that a perpetual trust containing *discretionary noncharitable powers*, is void in its entirety. The rule there expressed is the following:

> "Where a bequest is made for charitable purposes, and also for purposes of an indefinite character, which are not charitable, the whole bequest will be void. . . . The question is, not whether he (the trustee) *may* not apply it upon purposes strictly charitable, *but whether he is bound so to apply it?*"

This rule is part of the California law of charitable trusts. See *Estate of Hinckley*, 58 Cal. 457, 508-9 and cases in footnote.[3] It has the force and effect of a statute because of the circumstances surrounding its adoption.

Originally, California was not a common law jurisdiction. It did not operate under that system under five months after the first State Constitution of November

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[2a] *Martin v. Superior Court*, 176 Cal. 289, 292-3, 168 P. 135.

[3] *Estate of Sutro*, 155 Cal. 727, 102 P. 920; *Estate of Vance*, 118 Cal. App. 463, 4 P. 2d 977; *Estate of Huebner*, 127 Cal. App. 244, 15 P. 2d 758; *Estate of Kline*, 138 Cal. App. 514, 32 P. 2d 677; and *Estate of Peabody*, 21 Cal. App. 2d 690, 70 P. 2d 249. *Collier v. Lindley*, 203 Cal. 641, 266 P. 526, presents an apparent conflict on the facts because a trust was sustained that was "in the main" educational. The constitutional point was not raised or discussed. There was no reference to the rule in the *Bishop of Durham* case or to the statute adopting the Common Law. This was a friendly suit brought by parties united by their interest to uphold the trust. Because of the collusive nature of the proceeding, the decision has no binding force as a precedent. For a detailed discussion on this point, see Appellants' Reply Brief (Rec. Item 5), pp. 71-79. The latest expression of opinion by the California Supreme Court, is *Davenport v. Davenport*, 36 Cal. 2d 67, 222 P. 2d 11, holding that trusts for a mixture of charitable and non-charitable objects are void.

13, 1849, became effective. Mexican and Spanish law were previously in force. The new system of common law and equity was not *inherited* from Mexico—the former sovereign—it was *transplanted* by special Act of the Legislature. Being so enacted, these are *legislative* and not judicial principles. There is no judicial power of modification, amendment or repeal. No court is authorized to exempt a particular case from their operation.[4] There is no judicial power to amend the Constitution or repeal a statute.

STATEMENT OF THE CASE.

A proper decision here depends on (1) a truthful interpretation of decedent's will, and (2) giving effect to the evidence concerning the non-charitable powers and activities of Respondent—the Trustees of Stanford University.

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[4]By the Treaty of Guadalupe Hidalgo (Vol. I, Calif. Stats., pp. 14-22, Art. V), a new international boundary was established and territory including California ceded to the United States. Calif. Const. of 1849, Art. XII, Sec. 1, provided that all laws in force at the time of its adoption and not inconsistent therewith should continue "until altered or repealed *by the Legislature*." Between Nov. 13, 1849, and Apr. 13, 1850, the State operated under the legal system of Mexico; see *Fowler v. Smith*, 2 Cal. 568, and *McNeil v. First Congregational Society*, 66 Cal. 105, 4 P. 1096. On Apr. 13, 1850, the Common Law of England was made the rule of decision (Vol. I, Calif. Stats., Chapt. 95, p. 219). On the same date, the Mexican law respecting intestate distribution of property was superseded by a new statutory basis for descent and distribution of a decedent's estate (Vol. I, Calif. Stats., Chapt. 96, pp. 219-221). On Apr. 22, 1850, there was a general enactment repealing all laws in force other than those passed or adopted by the Legislature (Vol. I, Calif. Stats., Chapt. 125, p. 342). The net result is that California operated under the Mexican system for about five months and there was an outright repeal of that system by statute, accompanied by *legislative adoption* of a new system—the Common Law—which had not previously existed in the State.

The relevant parts of the will are: the preamble in paragraph SECOND, the bequest in trust, and the implementing clause requiring the establishment of a Foundation (Will, 3:25-5:5).[5] These provisions are here quoted in full with the insertion of appropriate headings indicating the nature of the subject matter. They are the following:

Statement respecting the cause of war:

> "The ever-recurring misunderstandings between the various nations and peoples of different races which impede human progress and lead to devastating wars, are *obviously attributable*, in *large measure*, to differences of *environment* and *language*."

Belief in *opinion molding* as a means of prevention:

> "I believe that these *handicaps* can be largely *overcome*, if the men and women whose vocation vests in them the *power to mold public opinion*, make a *conscious effort to that end*."

Special knowledge required:

> "However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds."

That public opinion is based mainly on what appears in the newspapers:

> "The *molding of public opinion* in the United States, insofar as concerns the attitude of our citizens to-

[5]Since the record is not printed, typewritten copies of the will are being delivered to the Clerk for the convenience of the Court. That document is cited with appropriate page and line references.

ward anything foreign, rests *almost entirely* with the press. . ."

Ignorance of editors and foreign correspondents:

". . . the press . . . must depend upon editorial staffs and foreign correspondents. Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part . . ."

Bequest in trust to correct conditions:

"I have therefore long cherished the hope that I might be able to do *something* to help toward the correction of these *conditions*, and to that end I hereby give and bequeath . . . all of my estate and property, . . . *in trust* for the *foregoing purposes*,—subject to the express terms and conditions hereinafter set forth:"

Establishment of a Foundation:

"(a) My said Trustees shall establish a *Foundation of World Relations* for the aforesaid purposes;" (Italics in original).

Perpetual maintenance with a Trust Fund:

"and my said Trustee shall use and apply the net income derived from said trust estate for the maintenance of said Foundation."

There is no provision indicating *how* the Foundation is to be established, or defining the scope of its activities once it is set up. Its charter purposes *must* include every-

thing set forth in the preamble.[6] Its charter *powers* are created by implication. Consequently, the rule in Vol. I of the *Restatement of the Law of Trusts*, Sec. 186, p. 485, must apply:

> ". . . the trustee can properly exercise such powers and only such powers as (a) are conferred upon him in express words by the terms of the trust, or (b) are *necessary* or *appropriate* to carry out the *purposes of the trust* and are *not forbidden by the terms of the trust.*"

The Foundation is not required to use educational means either in whole or in part, or to limit its activities to those which the law deems charitable. Its directors may do anything *necessary* or *appropriate* to correct or attempt to correct any condition mentioned in the preamble. Furthermore the Foundation is an entity separate and distinct from the Trust Fund created to maintain it.

This rule respecting implied trust powers is well recognized and universally applied.[7] Due process and equal

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[6] "My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;*" (Will, 5:2-3.)

". . . I hereby give and bequeath . . . all of my estate . . . in trust for the *foregoing purposes*, . . ." (Will, 4:22-26).

The reference in both instances is to the purposes referred to in the preamble, there being a trust purpose to correct each of the conditions mentioned, and provision for establishing a multiple purpose foundation.

[7] Bogert on Trusts and Trustees, Vol. 3, Part I, Sec. 551, p. 406: "Implied powers are those which are not clearly and directly given by settlor or a court, but which equity believes the founder of the trust or a court granting express powers intended should exist. They are implied or inferred from the terms and purposes of the trust. If a settlor has directed the trustee to reach a certain end, he must be deemed to have intended that the trustee use the ordinary and natural means for obtaining that result." Bogert, Vol. 2A, Sec. 391, p. 190: "Trustees of charitable trusts have such

protection require that it be applied here, in the interpretation of this will.

The following are some of the activities in which this Foundation may engage:

Inducements may be offered to men and women in opinion molding vocations to cause them to exercise their power.

The Foundation might control or operate a television or radio broadcasting station and thus require the men and women in its employ to mold public opinion in accordance with its policies. It could carry on such a business for profit; for the benefit of commercial interests; or for both purposes.

Commercial production and sale of magazines, newspapers, or information bulletins, to a list of paid subscribers, will enlighten those citizens who now depend mainly on what appears in the newspapers.

Instructional material could be prepared and sold commercially to editors, foreign correspondents of newspapers, and others in opinion molding vocations.

A research business might be established and operated for profit for the benefit of commercial interests in the textbook publishing field.

These are all *business activities* in areas affecting education. None of them is charitable. A trust for the per-

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powers as are expressly or impliedly given them by the settlor, or are vested in them by statute. There is little that is peculiar about the law relating to the powers of such trustees. In the main, the principles set forth elsewhere as applicable to private trusts govern here." See also Scott on Trusts, Vol. II, 2d Ed., Sec. 186, p. 1370.

petual maintenance of such a business violates the *Bishop of Durham* rule and the perpetuity clause of the State Constitution.

As original trustees the testatrix designated "The Trustees of the Leland Stanford Junior University." Respondent asserts that notwithstanding the clear language used, the bequest was to the Board and not to the trustees comprising its membership. Even if it were proper to disregard this wordage, the distinction is immaterial. The Stanford Trustees have the power to engage in non-charitable business as a Board;[8] and also as individuals. In 1946 they met and, as a Board adopted resolutions to establish the business corporation known as "*Stanford Research Institute.*" This is a wholly owned affiliate carrying on research, on a fee contract basis, for the benefit of industry. It has developed a volume of $10,000,000. Among its clients are Eastman Kodak Company, General Electric Company, General Foods Corporation and the Southern Pacific Railroad. Under fee contracts it has studied freight rates for railroads, the distribution of freight cars, marketing problems and inventory control.[9]

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[8]Exhibit 32, pp. 89-91, includes provisions of a decree of the Superior Court of Santa Clara County, California, confirming the fact that the trustees exercised the benefit of a statute empowering them to organize as a board. California Education Code, Secs. 21301-21303, constitute the statutory basis for the *Board* functioning and acting in this corporate capacity.

[9]Exhibits 25-A and 25-B contain Trustees' Minutes of Sept. 19 and Oct. 17, 1946, providing for establishment of Stanford Research Institute under the control of Respondent; see Exhibit 13, Articles of the Institute, Exhibit 20, standard form of Research Contract, and Exhibits 21, 22 and 23, brochures indicating the scope of research business.

Other noncharitable activities of Respondent include the commercial operation of a hospital and a book store.[10] Decedent's Foundation can be established as another noncharitable affiliate of Respondent according to the Stanford Research Institute plan. The possibilities are almost unlimited.

FALSE STATEMENTS IN THE OPINION.

There are nine deliberately false statements of fact and law, as follows:

(1) "In the instant case, the will restricts the use of trust property solely to charitable purposes" (Op. vi:4-5).

There is no such clause or restriction.

(2) "If the trust income is sufficient, the trustees are to establish a professorship" (Op. vi:11-13).

The will refers, in precatory terms, to a "professorship" but includes no provision imposing a legal obligation. (Will, 6:26-7:7).

(3) "Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select noncharitable objects, employ noncharitable means, or use the income for noncharitable purposes." (Op. vi:19-23).

As noted above, this will relies on *implied power* in the execution of the stated purposes and it authorizes use of that power free and clear of all restrictions.

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[10] See *Baker v. The Board of Trustees of the Leland Stanford Junior University*, 133 Cal. App. 243, 23 P. 2d 1071; and *Stanford University Book Store v. Helvering*, 83 F. 2d 710.

(4) "The trustees are given only the discretionary power to determine the particular plan for carrying out the purposes of the trust" (Op. vi:23-26).

After the Foundation has been established, its policies and plans will be determined by its own Board of Directors. There is no term requiring Respondent to remain in control. The sole responsibility of Respondent may be limited to the investment of the Trust Fund.

(5) "Stanford University . . . is organized for public benefit and not for private profit" (Op. vi:7-8).

The *educational* activities of Respondent are charitable. Its business and noncharitable ones fall into an entirely different category.

(6) "The appellants rely chiefly on Estate of Sutro, 155 Cal. 727, 102 P. 920" (Op. v:26-27).

On the contrary, our reliance is on the *Bishop of Durham* case and Article XX, Section 9, of the State Constitution.

(7) "The testatrix intended to make a bequest to the governing body of Stanford University. . . ." (Op. vii:18-20).

The bequest is to the *Trustees;* not to the Board.

(8) ". . . an ultimate purpose to promote peace and world understanding is a valid charitable purpose" (Op. iv:32-33).

Decedent's purpose was not to promote understanding, but to *overcome* handicaps by *molding public opinion.*

(9) "Bequests to promote peace and world understanding have been upheld in other jurisdictions"

There is no case in any jurisdiction where a trust to promote "world understanding" by other than educational means, has been upheld.

HALF-TRUTHS.

There are partially true but misleading statements, as follows:

(1) ". . . the testatrix desired to contribute toward world peace by providing education for newspapermen. Such a purpose is fundamentally educational" (Op. iv:17-20).

This is *one* of the stated purposes. Several others, not mentioned, include non-charitable activity.

(2) ". . . a construction of a will favorable to testacy will be adopted when the language used reasonably admits of such construction" (Op. iii:35-iv:1).

The true rule is that a trust must *first* be construed in accordance with statutory and other established rules of interpretation. There can be no ruling as to its validity until the legal meaning has been thus determined.

(3) ". . . courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good" (Op. iv:4-7).

Due process and equal protection prohibit such discrimination. The statutory rules governing construction of wills must be applied to all wills and in all cases.

SUPPRESSION OF MATERIAL FACTS.

The opinion omits reference to the following facts and issues essential to a fair review on appeal:

(1) Petitioners' reliance on the *Bishop of Durham* rule, on statutes adopting the common law, and on Article XX, Section 9, of the State Constitution.

(2) The effect of decedent's failure to prohibit the conduct of noncharitable activities or the use of noncharitable means.

(3) The silent treatment was given to the opinion of the British Court of Chancery in *Matter of Strakosch* (1949) 1 Ch. Div. 529—a case directly in point, and cited at pages 90-93 of our Reply Brief. The court there held invalid, a trust to be used "for any purpose" that would strengthen the bonds of unity between Great Britain and the Union of South Africa.[11] Candor and ordinary fairness required some mention and attempt to distinguish an authority of this importance.

EXERCISE OF LEGISLATIVE POWER.

By the misrepresentations in the opinion the District Court of Appeal concealed the fact that it was, actually, exercising the legislative power to exempt this case from

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[11] "We may observe that if this gift were to be held to be charitable it would mean that any gift in favour of 'charity' generally (i.e., *without any specific direction as to its application*) could be lawfully applied (e.g., under a scheme) to the objects here stated. . . .

"The problem of appeasing racial feeling within the community is a *political problem*, perhaps *primarily* political. One method conducive to its solution might well be to support a political party or a newspaper which had such appeasement most at heart." (1949) 1 Ch. Div. 538.

the Bishop of Durham Rule and Article XX Section 9 of the State Constitution. Further evidence of legislative intent is found in the intimation that the law ought to be changed.[12] This conduct was a denial of due process and equal protection.

WILLFUL DISREGARD OF PETITIONERS' RIGHTS.

These actions were not the result of mere error or inadvertence. They were deliberate. The Justices had the benefit of a full presentation in the briefs and on oral argument. Findings were requested, on appeal, in accordance with the record.[13] One of the Justices, who was challenged for bias, filed an affidavit alleging his ability to act "without being influenced by any consideration".[14] He then abdicated his responsibility, failing to either concur in, or dissent from the decisions of his associates. One of the Trustees of Stanford is a Justice of the State Supreme Court. Our request for appointment of a Justice pro tem was disregarded.[14a] The Supreme Court denied a hearing.

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[12]". . . the earlier decisions were somewhat quick to find the possibility of a noncharitable use, while the recent cases are less inclined to search minutely. . . . In the Sutro case as in Estate of Peabody . . . the trustees were authorized to apply the trust fund for the benefit of generally described existing institutions. . . ." (Op. v:28 vi:2).

[13]See Reply Brief pp. 67-68 citing California Code of Civil Procedure Sec. 956a authorizing the Appellate Court to make its own findings, in accordance with the evidence.

[14]See Record—Affidavit of Maurice T. Dooling in Response to Claim of Disqualification.

[14a]Justice Homer Spence. See Petition for Hearing in Supreme Court, pages 1-2.

and it also refused to investigate. Under Rules of Court, it was under a duty to act.[15]

Both the District Court of Appeal and the Supreme Court had the power and the duty to make their own interpretation of the will. They were not bound by any finding of the Trial Court. The words of the will constitute the sole evidence of decedent's intent. No other evidence was offered or admitted on that issue.[16] This Court has the same independent power to make its own determination.

MANNER OF ASSERTING FEDERAL QUESTIONS.

Petitioners raised the federal questions here involved by a Petition for Rehearing in the District Court of Appeal, and by Petition for Hearing in the State Supreme Court. Both petitions contain specific reference to the rights involved with statement of the overt acts and other circumstances. See footnote.[17] Prior to the filing of the opinion on February 16, 1959 Petitioners were not on notice and could not have anticipated the way in which their rights would be infringed.

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[15]Rule 29b provides that a hearing will be granted by the State Supreme Court material facts are omitted from or incorrectly stated in the opinion, or where substantial issues raised in the briefs are not considered.

[16]*Estate of Jones*, 130 Cal. App. 2d 196, 201; 278 P. 2d 701; *Estate of Platt*, 21 Cal. 2d 343, 352, 131 P. 2d 825.

[17]Petition for Rehearing cites 7 false statements in the opinion (pp. 2-7), prejudice resulting from disregard of 8 material facts (pp. 7-10), denial of due process and equal protection in consequence of the delivery of the false and misleading opinion, the failure to apply statutory rules of interpretation, and the act of the Court in failing to apply equal justice in accordance with *Estate of Kline*, 138 Cal. App. 514 (pp. 10-11).

Petition for Hearing by the Supreme Court refers to the same falsehoods, half-truths, and suppression of material facts (pp.

REASONS FOR GRANTING CERTIORARI.

POINT NO. 1. FALSE INTERPRETATION OF A DOCUMENT.

Petitioners were denied due process and equal protection by the deliberately false construction placed on decedent's will, and by the entry of a judgment based thereon.

The integrity of our judicial system depends on the truthful interpretation of documents in accordance with statutory and other rules. Written instruments are the foundation of our jurisprudence and our civilization. The integrity of wills, contracts, statutes, treaties and constitutional provisions must alike be maintained. If the judiciary ever gets in the position of resorting to semantic devices to defeat the rights of litigants, abuse and disrespect for law will inevitably follow.

POINT NO. 2. A FRAUDULENT OPINION.

The same reasons apply here. An added factor is the circumstance that this Court must, to a large extent rely on the opinions of lower courts in exercising its jurisdiction. Strict observance of truth is an absolute necessity as well as a constitutional requirement. Petitioners were denied due process and equal protection by the nine deliberate falsehoods, the three statements of half-truths, and by the four suppressions of material facts in the District Court of Appeal.

6.12); it charges denial of equal protection in violation of the Fourteenth Amendment as the result of a failure to apply to this case the established rules of law which are uniformly applied to others (p. 13); requests the Court to investigate the misconduct in the District Court of Appeal (pp. 20-34); includes a further statement of the federal question at pages 34-35 claiming rights under 28 USCA Sec. 1257.

In *Communist Party v. Subversive Activities Control Board*, 331 U.S. 115, 124, this Court held that an order, based in part on perjured testimony, could not be sustained, and it said:

> "It does not remove the taint for a reviewing court to find that there is ample innocent testimony to support the Board's findings. . . . We cannot pass upon a record containing such challenged testimony."

These high judicial standards, enforced in cases affecting the rights of Communists, must have equal application, force and effect, in litigation where others are involved.

In *Chessman v. Teets*, 354 U.S. 156, at 162, it was held a denial of procedural due process to settle an inaccurate transcript on appeal in a criminal case. The constitutional right to a fair and adequate appeal record includes the right to a *truthful opinion* based thereon.

POINT NO. 3. UNLAWFUL PRESUMPTION TO JUSTIFY DISCRIMINATION BETWEEN LITIGANTS.

The opinion shows on its face that the lower courts resorted to a general presumption in favor of Respondent as an alleged charity not only in disregard of the record, but in violation of California Probate Code Section 102. The words of a will must have two or more possible meanings to justify resort to any type of presumption thereunder.

Hostility toward certain litigants and favoritism toward others is clearly a denial of both due process and equal protection.

The rule against discrimination in judicial proceedings, as enunciated in *Estate of Kline*, 138 Cal. App. 514, 32 P. 2d 677 should be confirmed and given the force and effect of an authority by the decision of this Court.

POINT NO. 4. JUDICIAL EXERCISE OF LEGISLATIVE POWER.

When properly interpreted, decedent's will discloses a violation of the perpetuity laws and the rule against non-charitable discretionary power set forth in *Morice v. The Bishop of Durham*, supra. The act of the lower Court in failing to apply these constitutional and legislative principles amounted to an exercise of legislative power, and therefore a denial of due process and equal protection of the laws. This question is of major public importance because it involves a definition of the nature and scope of judicial power; its relationship to the Executive, and Legislative Departments of Government.

POINT NO. 5. MINIMUM STANDARDS IN APPELLATE COURTS.

This Court has applied the due process clause of the Fifth Amendment and corresponding provisions of the Fourteenth to proceedings before Congressional investigating committees,[18] investigating committees of State Legislatures,[19] proceedings before the Subversive Activi-

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[18] *Watkins v. United States*, 354 U.S. 178; *Flaxer v. United States*, 79 S. Ct. 191; *Sacher v. United States*, 78 S. Ct. 842.

[19] *Sweezy v. New Hampshire*, 354 U.S. 234; *Uphaus v. Wyman*, 355 U.S. 16; *Raley, et al. v. Ohio*, 354 U.S. 929; *Gibson v. Florida Legislative Investigation Committee* (Oct. Term 1958, No. 873); *Bates v. City of Little Rock* (Oct. Term 1958, No. 770); *NAACP v. Arkansas* (Oct. Term 1958, No. 772); *Scull v. Virginia Committee on Law Reform and Racial Activities* (Oct. Term 1958,

ties Control Board,[20] hearings of Federal Boards and Commissions,[21] and proceedings of State Boards of Bar Examiners.[22] It has inquired into the fairness of *trials* in both Federal and State Courts to determine the extent to which the requirements of due process and equal protection have been there observed.[23] The appellate level is the only area of importance not covered by some prior decision. It is of equal, if not greater importance. It concerns the integrity of the judicial process, public respect for the Courts, and for law and order. The Federal and State Judiciary, the Bar, and the General Public are vitally concerned.

A further reason for review here is the fact that many cases on this Court's appellate docket now involve members of racial minority groups or the claims of persons charged with communist affiliation. Certiorari is based on discrimination and violation of the Fourteenth Amendment. An objective decision on appellant standards is a virtual impossibility in such cases. That determination ought to be made in a proceeding where this factor is not present. The pending matter is such a case.

No. 51); *NAACP v. Committee on Offenses Against the Administration of Justice* (Oct. Term 1958, No. 84).

[20] *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115.

[21] *Cole v. Young*, 351 U.S. 536; *Gold v. United States*, 350 U.S. 985; *Jencks v. United States*, 353 U.S. 657; *Service v. Dulles*, 354 U.S. 363.

[22] *Schware v. Board of Examiners of New Mexico*, 353 U.S. 232; *Konigsberg v. State Bar of California*, 353 U.S. 252.

[23] *Gold v. United States*, 350 U.S. 985; *United States v. Witkovich*, 353 U.S. 194; *Jencks v. United States*, 353 U.S. 657; *Slochower v. Board of Education of the City of New York*, 350 U.S. 551.

POINT NO. 6. RIGHT TO EQUAL TREATMENT IN APPLICATION OF THE BILL OF RIGHTS.

It has been repeatedly held in criminal and other proceedings involving *Personal Rights* that the due process and equal protection clauses will be strictly enforced. Petitioners, who assert *Property Rights* have been denied that protection. They are entitled to equal justice and equal treatment. The dictum on this point in *Ullmann v. United States*, 350 US 422, 428 and *Board of Education v. Barnette*, 319 US 624, 648 should be declared applicable to Property Rights, and enforced in the case at bar. We request this Court to make that determination.

POINT NO. 7. CERTIORARI AS OF RIGHT.

The Congressional debates preceding establishment of the certiorari jurisdiction show that the basis for *discretionary* review was the assumption that *all* litigants would have the benefit of *one appeal* in some court.[24] Where the appellate court denies due process and equal protection there is, in effect, *no appeal*. The basis disappears for treating certiorari as a *discretionary* matter. Review then becomes a matter of right. We submit that it was not the intent of Congress to authorize an arbitrary denial of a

[24]The Act of February 13, 1925 (43 Stat. 936) is the basis of the present certiorari jurisdiction. There was a definite understanding, in conferring the discretionary review, that litigants would have one full and adequate review, as of right. See: Hearings Before Senate Judiciary Committee, on S. 2060, 68th Cong.; Statement of Senator Reed, and Senator Walsh, Vol. 66, Cong. Rec. pp. 2755-6; Letter of Chief Justice Taft to Senator Copeland, Vol. 66, Cong. Rec. p. 2920; Report of Sub-Committee of Senate Judiciary Committee on S. 2060, 68th Cong., 1st Session (Report No. 362) p. 3; Report of House Judiciary Committee on HR 8206, 68th Cong. 2d Session, Report No. 1075, pp. 2-3.

writ in such cases. Indeed, it could not do so in view of the obligation imposed by the judicial oath provision in Article VI of the Constitution.

Petitioners are the legal heirs of the decedent Janet M. Peck, entitled as such to the residue of her estate. They have been deprived of their property rights in this estate by the violations of the Fourteenth Amendment set forth in this Petition. Their status is set forth in the footnote hereto.[25] Writs of certiorari to protect and enforce those rights are respectfully requested.

Dated, San Francisco, California,
July 8, 1959.

AARON M. SARGENT,
Attorney for Petitioners.

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[25]Decedent's closest relative was Edmund More, Jr., a first cousin who assigned one-half his interest in the estate to Petitioner Aaron M. Sargent, and subsequently relinquished his interest in the remaining one-half with the result that said share descended equally to petitioners herein as next of kin in equal degree. Since the trust was absolutely void as being contrary to public policy, in view of the provisions of the State Constitution, this relinquishment did not confirm any rights of Respondent. It merely transferred rights in residue to others. Termination of the rights of Edmund More, Jr., is now res adjudicata. For a detailed discussion on this point see Appellants' Opening Brief pp. 56-60; and Appellants' Reply Brief pp. 101-106—both of which briefs are included in the record, on certiorari.

(Appendix Follows.)

Appendix

(Vol. 168 A.C.A. 28; 335 P. 2d 185.)

In the District Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 18,130.

In the Matter of the Estate of
Janet M. Peck,
Deceased.

Aaron M. Sargent, Cornelia M. Sargent, Madelyn Georgian, Guardian ad Litem of Helen M. Sargent, Jr., Frank M. Howell, Jr., Orrin P. Howell, Marietta Gann Bundy, Elizabeth Gann Handel, Louise Flinn, Fred Howell, Charlotte More Meloney, Frank More and Margaret More White,
Appellants,

vs.

The Board of Trustees of the Leland Stanford Junior University,
Respondent.

OPINION

The only question on this appeal is the validity of a charitable trust created by the will of Janet Peck. By a decree determining heirship and ordering preliminary distribution, the probate court found the trust valid and ordered distribution accordingly, to the Board of Trustees of The Leland Stanford Junior

University, respondent herein. Appellants assert that the trust is void and claim the estate on grounds of intestacy.

Janet Peck died in 1956, leaving an estate valued at over $480,000. Her closest surviving relative was a first cousin, Edmund More, Jr. Appellants are the children of persons who were first cousins of the testatrix. By her will, dated 1936, Janet Peck left her estate in trust to the Trustees of Stanford University, subject only to certain annuities.

Appellants contend that: (1) The trust is not a valid charitable trust as the property must not be used exclusively for educational purposes; (2) The testatrix intended to make a bequest to the trustees individually; (3) The trial court erred in denying appellant's petition for preliminary distribution and determination of heirship. Appellants have also filed a motion requesting findings on appeal, based on substantially the same contentions. There is no merit in the appellants' position.

The relevant language of the will is as follows:

"SECOND: The ever-recurring misunderstandings between the various nations and the peoples of different races which impede human progress and lead to devastating wars, are obviously attributable, in large measure, to differences of environment and language. I believe that these handicaps can be largely overcome, if the men and women whose vocation vests in them the power to mold public opinion, make a conscious effort to that end. However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds. The molding of public opinion in the United States, insofar as concerns the attitude of our

citizens toward anything foreign, rests almost entirely with the press which, in turn, must depend upon editorial staffs and foreign correspondents. Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part in what should be the foundation of one of the most important patriotic contributions which they could make to our country and the welfare of its citizens. I have therefore long cherished the hope that I might be able to do something to help toward the correction of these conditions, and to that end I hereby give and bequeath to THE TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (hereinafter referred to as my 'Trustees') all of my estate and property, both real and personal and wheresoever the same may be situate, *in trust* for the foregoing purposes,—subject to the express terms and conditions hereinafter set forth:

"(a) My said Trustees shall establish a *Foundation of World Relations,* for the aforesaid purposes; and my said Trustees shall use and apply the net income derived from said trust estate for the maintenance of said Foundation. My said Trustees, shall, in their own discretion, determine from time to time the manner in which said net income may be best expended for said purposes, in view of the amount available therefor; and they may, if they deem such course wise, postpone the expenditure of any sums for my said trust purposes, until such time as the income available therefor shall, in their opinion, be adequate to meet such expense as may be necessary to accomplish something substantial in the said field of learning [sic] to which said trust is dedicated."

We start with several fundamental principles of the law. First, that a construction of a will favorable to testacy will be adopted when the language used

reasonably admits of such construction, (*Estate of Wellings*, 197 Cal. 189 [240 P. 21]; *Estate of Dunphy*, 147 Cal. 95 [81 P. 315]; *Estate of Heywood*, 148 Cal. 184 [82 P. 755]). Second, courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor. (*Estate of Quinn*, 156 Cal.App.2d 684 [320 P.2d 219]; *Estate of Tarrant*, 38 Cal.2d 42 [237 P.2d 505, 28 A.L.R.2d 419]; *Estate of Bunn*, 33 Cal.2d 897 [206 P.2d 635]; *Collier v. Lindley*, 203 Cal. 641 [266 P. 526]; *Estate of Hinckley*, 58 Cal. 457.)

We think any reasonable construction of the language used by the testatrix indicates that the testatrix desired to contribute toward world peace by providing education for newspapermen. Such a purpose is fundamentally educational. It has long been the law in this state, that a trust for educational purposes is a trust for charitable purposes. (*Lundberg v. County of Alameda*, 46 Cal.2d 644 [298 P.2d 1]; *Estate of Yule*, 57 Cal.App.2d 652 [135 P.2d 386]; *Estate of Bailey*, 19 Cal.App.2d 135 [65 P.2d 102]; *Estate of Bartlett*, 122 Cal.App. 375 [10 P.2d 126]; *Estate of Purington*, 199 Cal. 661 [250 P. 657]; *Estate of Royer*, 123 Cal. 614 [56 P. 461, 44 L.R.A. 364]; *People v. Cogswell*, 113 Cal. 129 [45 P. 270, 35 L.R.A. 269]; *Estate of Hinckley, supra*, 58 Cal. 457.)

Nor can it be doubted in this day and time, that an ultimate purpose to promote peace and world understanding is a valid charitable purpose. Our courts have long recognized that "The enforcement of charitable uses cannot be limited to any narrow and stated formula. As has been well said, it must expand with

the advancement of civilization and the daily increasing needs of men. New discoveries in science, new fields and opportunities for human action, the differing conditions, character, and wants of communities and nations, change and enlarge the scope of charity, and where new necessities are created new charitable uses must be established. The underlying principle is the same; its application is as varying as the wants of humanity." (*People v. Dashaway Assn.*, 84 Cal. 114, 122 [24 P. 277, 12 L.R.A. 117]; see also *People v. Cogswell*, 113 Cal. 129 [45 P. 270, 35 L.R.A. 269].) Bequests to promote peace and world understanding have been upheld in other jurisdictions. (*Tappan v. Deblois*, 45 Me. 122, *Mills v. Montclair Trust Co.*, 139 N.J.Eq. 56 [49 A.2d 889]; *In re Harmon's Will*, 80 N. Y.S.2d 903.)

Appellants argue that the trust is one solely for propaganda. Even if this were so, a trust with the object of creating a more enlightened public opinion and a bequest to an organization with political purposes have been held to be valid charitable trusts in this state. (*Collier v. Lindley*, 203 Cal. 641 [266 P. 526]; *Estate of Murphey*, 7 Cal.2d 712 [62 P.2d 374].)

Appellants further argue that the language of the will permits noncharitable as well as charitable uses. The appellants rely chiefly on *Estate of Sutro*, 155 Cal. 727 [102 P. 920]. As we recently pointed out in *Estate of Rollins*, [1]163 Cal.App.2d ....., at p. ....., the earlier decisions were somewhat quick to find the possibility of a noncharitable use, while the recent cases are less inclined to search minutely for the possibility of a noncharitable use. In the Sutro case as in *Estate of Kline*, 138 Cal.App. 514 [32 P.2d 677]; *Estate of Peabody*, 21 Cal.App.2d 690 [70 P.2d 249], the

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[1]Advance Report Citation: 163 A.C.A. 242, at p. 245.

trustees were authorized to apply the trust fund for the benefit of generally described existing institutions, some of which were charitable and some of which were privately operated for profit. In the instant case, the will restricts the use of trust property solely to charitable purposes. The only institution mentioned in the will is Stanford University which is organized for public benefit and not for private profit. The trustees are to establish a Foundation of World Relations and to use the net income of the trust property for the operation of the Foundation. If the trust income is sufficient, the trustees are to establish a professorship.

Furthermore, under the terms of the founding grant, which is made applicable to all bequests to the Stanford Trustees by section 10 of article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes. Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select noncharitable objects, employ noncharitable means, or use the income for noncharitable purposes. The trustees are given only the discretionary power to determine the particular plan for carrying out the purposes of the trust. This is proper and in accord with the law. As stated in *Estate of Butin,* 81 Cal.App.2d 76 at 81, 82 [183 P.2d 304]: ". . . it is not necessary that a detailed plan of execution shall be stated. When the general nature of the trust is adequately designated, its execution may be delegated to the named trustees, subject to the approval of court. (*Russell v. Allen,* 107 U.S. 163 [2 S.Ct. 327, 27 L.Ed. 397]; 14 C.J.S. 436, § 7.)" (See also *Estate of Clippinger,* 75 Cal.App.2d 426 [171 P. 2d 567].)

Appellants also cite *Davenport v. Davenport Foundation*, 36 Cal.2d 67 [222 P.2d 11], in which one of the stated purposes of the trust was the making of annuity payments to named individuals for a period longer than that permitted by the rule against perpetuities. In the instant case, all of the annuitants, except Mrs. Railton, predeceased the testatrix, and the annuity to Mrs. Railton terminates 15 years after the death of the testatrix or the death of Mrs. Railton, whichever occurs first.

Appellants also argue that the will bequeathes the trust to the individuals who happened to be the Trustees of Stanford University at the date of her death and not to the Board of Trustees of Stanford University. The dispositive language of the will is to "the trustees of the Leland Stanford Junior University—(hereinafter referred to as 'my Trustees')." There is no ambiguity or uncertainty in this language. The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford University was in accordance with section 10 of article IX of the state Constitution which is as follows:

"... The Board of Trustees of the Leland Stanford Junior University, as such, or in the name of the institution, or by other intelligible designation of the trustees or of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the Trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests and devises supplementary thereto."

Appellants' final contention on appeal relates to the trial court's alleged failure to grant their petition for preliminary distribution and determination of heirship. This contention need not be answered here in view of our upholding the validity of the trust.

In view of the foregoing, the decrees appealed from are hereby affirmed and the appellants' motion for findings on appeal is denied.

Kaufman, P. J.

Draper, J., concurred.

Filed February 16, 1959.

Lawrence R. Elkington, Clerk.